

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 24, 2016

To: The Commission
(Meeting of February 25, 2016)

From: Nick Zanjani, Senior Legislative Liaison
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 512 (Hill) – Public Utilities Commission.**
As amended: January 4, 2016

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUMMARY OF BILL

This bill changes the governance and operations of the CPUC, requiring the CPUC to:

- Meet once each month in San Francisco or Sacramento – with at least 6 meetings held in Sacramento;
- Make written testimony, advice letters, protests, and responses available on the CPUC’s electronic docket and website.
- Update the CPUC’s website to include information describing how members of the public can gain access to ratemaking proceedings, and the role of the public advisor for connecting members of the public to staff and decisionmakers;
- Modify the annual report to include performance criteria for both the CPUC and executive director, and annual evaluation of the executive director based on the performance criteria;
- Modify reporting on the timeliness in resolving cases, including rehearings; and
- Adopt procedures to proactively seek the views of those likely affected by a ratemaking or quasi-legislative proceeding.

Additionally, the bill clarifies that the judicial code of ethics applies to CPUC Administrative Law Judges (“ALJs”).

CURRENT LAW

- CPUC is required to hold at least one session per calendar month in the City and County of San Francisco.

- The CPUC currently posts rulings, motions, briefs and proposed decisions on its website docket card, but not written testimony or advice letter filings;
- Advice Letters are tracked in accordance with a CPUC General Order, but some protests and responses are available for a limited subset of advice letters via a pilot.
- The CPUC's annual workplan describes the scheduled ratemaking proceedings and other decisions that may be considered by the CPUC during the calendar year; and
- The CPUC submits to the Governor and Legislature by February 1, a report on the number of cases where resolution exceeded the time periods prescribed in scoping memos.

AUTHOR'S PURPOSE

The author states "recent scandals at the CPUC have highlighted the need for more visibility in the interactions between commissioners and regulated utilities, and a series of embarrassing audits of the CPUC's mismanagement of public funds [and] poor safety oversight point toward poor management of the operation."

"SB 512 would reform the CPUC's governance structure, more clearly outlining the roles and responsibilities of the commissioners and staff, and it would end loopholes that allow regulated utilities to influence CPUC commissioners outside the public eye."

DIVISION ANALYSIS (Legal Division)

Section 1 (Amending Public Utilities [PU] Code Section 306). Six meetings in Sacramento

The bill would bring official CPUC meetings to Sacramento on a more regular basis. The fiscal impact of holding six meetings in Sacramento is substantial. This provision could also make the meetings less accessible to others around the state by making it more difficult for the CPUC to hold meetings in other parts of the state, which it currently does once or twice a year.

The CPUC is committed to increasing the public's access to information about its proceedings. The number and frequency of CPUC voting business meetings held in Sacramento and other areas of the State outside of San Francisco should be increased to at least once a quarter.

Section 2 (Amending PU Code Section 311.5). Document availability.

The bill would require the CPUC to expand its web posting of the administrative record for proceedings and advice letters to include "the public versions of all prepared written testimony and advice letter filings, protests, and responses."

Advice letters. Making advice letters available relates to a pending CPUC “eFAST” Budget Change Proposal¹ for information technology improvements.

Currently, a CPUC pilot links to the required documents, but only for the major electric utilities—not the communications or water advice letters.² If the intent of the bill is for the advice letter information to be provided in a manner similar to proceeding docket cards, the results of the pilot may not satisfy this intent – the pilot is not as user friendly at this time.

The CPUC’s record in all contested formal proceedings³ should be made accessible to the general public through the CPUC’s website in an easy, convenient and timely manner. Increased funding will be needed to ensure that the CPUC can make the record publicly accessible while ensuring adequate compensation for court reports.

Section 3 (Striking PU Code Section 910); Section 4 (New PU Code Section 910). Annual reporting, performance criteria, other requirements.

The bill would subject the Executive Director to annual evaluations based on clear performance criteria and require that certain information be included in the CPUC’s annual workplan and report to the Legislature. The CPUC has already started an annual evaluation system and undertaken an initiative to develop better metrics for measuring performance and meeting public policy objectives at key management levels - statutory change is unnecessary.

This bill would require the CPUC to create and widely disseminate performance evaluation information on the Executive Director’s performance during the previous year. Performance evaluations are generally considered private and are not disclosed unless a compelling public interest outweighs the individual’s privacy rights. This bill would require the creation of performance documents for the purpose of disclosure to the public at large without any showing of a compelling interests that would justify the subordination of an individual’s privacy interests. Public Records Act specifically exempts certain types of documents from disclosure, including personnel records, out of concern for the privacy interests of the individual. Performance matters are appropriately understood to be private and should only be disclosed on a need to know basis. Furthermore, if personnel evaluations were to be available to the public, those responsible for providing the evaluation would likely reveal little about any actual performance deficiencies. The unintended consequence could be that the neutral or favorable public performance documents could be used against the agency later if the Executive Director was removed for actual performance problems.

¹ http://web1a.esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG8660_BCP576.pdf

² <https://cpucadviceletters.org/documents/list/recent/>

³ Including prepared testimony, exhibits, reporters’ transcripts, etc.

Section 5 (Amending PU Code Section 910.1). Modified proceeding reporting

The bill would modify the requirement that the CPUC annually report to the Legislature on its timeliness in resolving cases, including information on the disposition of applications for rehearings. The report shall include the number of scoping memos issued in each proceeding and the number of orders issued extending the statutory deadlines. These measures could be implemented without legislation. The annual workplan currently reports on the timeliness of proceedings with various metrics—including metrics similar to those required in the bill.

Section 6 (Amending Code Section PU 1701). Judicial ethics

The bill would make clear that the CPUC’s administrative law judges are subject to the Administrative Adjudication Code of Ethics (Article 16 of Gov. Code Ch. 4.5 (the Administrative Procedures Act)). In practice, the CPUC’s ALJs already subject themselves to this Code. In that regard, this could be a useful clarification.

Section 7 (New PU Code Section 1711). Requirement to seek the views of interested persons before opening a proceeding.

Would impose a new, affirmative obligation on the CPUC to consult with stakeholders “*who are likely to be affected*” by non-adjudicatory cases instituted on the CPUC’s own motion. The CPUC must include “those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding.” This provision would likely apply to Orders to Institute Rulemakings and non-adjudicatory Orders to Institute Investigations, but not to Applications. The author should clarify the proceedings intended to be covered. A related concern is that this process could tip-off regulated entities that the CPUC is considering instituting rulemakings, many of which consider industry practices that involve consumer protection and safety issues. For example, the Order Instituting Investigation on the Commission’s Own Motion to Determine Whether Pacific Gas and Electric Company and PG&E Corporation’s Organizational Culture and Governance Prioritize Safety (I.15-08-019). This provision will likely result in an increased workload for the Public Advisor’s Office. If the ex parte and disqualification provisions of SB 215 are adopted, it is unlikely that the commissioners themselves could facilitate any outreach efforts.

SAFETY IMPACT

The bill should have no impact on public safety.

RELIABILITY IMPACT

The bill should have no impact on reliability of service.

RATEPAYER IMPACT

The bill would increase staffing costs to the agency that would have to be passed on to consumers through their utility bills.

FISCAL IMPACT

Significant costs from six meetings in Sacramento. Significant costs to make documents publicly available if funding as outlined in the “eFast” Budget Change Proposal is not available. Additional, substantial costs related to the new PU 1711 requirements to seek views of interested parties.

ECONOMIC IMPACT

No impact is foreseen.

LEGAL IMPACT

The provision of this Bill that would require reporting the performance evaluation of the Executive Director could raise employment law issues. For example, if the Executive Director’s performance did not meet expectations due to medical or personnel issues.

LEGISLATIVE HISTORY

SB 215 (pending), proposes reforms of the ex parte communications laws, addresses the process for disqualifying a commissioner from a proceeding, and other reforms of the CPUC.

SB 661 (Hill) Protection of subsurface installations.

SB 1017 (Hill) Public Utilities Commission: public availability of utility supplied documents.

AB 825 (Rendon, 2015), vetoed, proposed a suite of reforms of the CPUC to make the agency more accessible and transparent to the public.

AB 1023 (Rendon, 2015), vetoed, proposed to codify the summary log requirements currently required at the CPUC for ratesetting proceedings and extends those requirements to quasi-legislative proceedings.

SB 660 (Leno and Hueso, 2015), vetoed, proposed reforms of the ex parte communications laws related to ratesetting and quasi-legislative proceedings, addresses the process for disqualifying a commissioner from a proceeding, and other reforms of the CPUC.

SB 611 (Hill, as amended April 13, 2013) proposed some of the same changes suggested in SB 48, including repealing some of the powers of the president. The bill was successfully voted out of Senate Committee on Energy, Utilities and Communications. It was subsequently amended numerous times, and ultimately chaptered into law with unrelated language regarding modified limousines.

PROGRAM BACKGROUND

The CPUC has publicly acknowledged concerns regarding transparency, accountability and governance and has committed to addressing them. The CPUC formed several two-commissioner subcommittees with responsibility and delegated authority to address governance, policy and structural reforms with the objective of increasing transparency, accountability, efficiency and effectiveness. These initiatives and others currently underway address the underlying goals of this bill.

General Order 96-B Rules for filing and publishing tariffs for gas, electric, telephone, telegraph, water and heat utilities. GO 96-B outlines Advice Letter publication, protests and responses,

Public Utilities Code Section 724(b)(5) states “advice letters approved by the commission” available on the commission’s website. The published report includes only the “status” of advice letters. Documents cannot be viewed, and protests, and responses, are not included (https://ia.cpuc.ca.gov/adviceletters/al_closed_e.htm).

The commission Advice Letter pilot (<https://cpucadviceletters.org/documents/list/recent/>) includes links to Advice Letters for the large energy utilities. Other Advice Letters and related documents are not posted to this site.

OTHER STATES’ INFORMATION

Not available.

SUMMARY OF SUGGESTED AMENDMENTS

This Bill is one of a number of Bills proposing reforms to CPUC governance. The goal of the CPUC’s suggested amendments is to align the Bill with the *Principles for Reform* document that the Governor’s Office has asked stakeholders to consider (please find this document attached). This bill is one of a suite of bills addressing topics related to the Principles outlined by the Governor’s Office. Amendments to this bill should be consistent with the outlined Principles.

This bill should be amended in the following way(s):

1. The bill should be amended to permit the CPUC to meet more frequently outside the City and County of San Francisco.

This is consistent with the Principle that states, “The number and frequency of Commission voting business meetings held in Sacramento and other areas of the State outside of San Francisco should be increased to at least once a quarter.”

2. Eliminate the public reporting on the Executive Director’s performance. The Bill could require the Executive Director to appear before the legislature to address performance related achievements. This could eliminate potential employment law conflicts or unhelpful annual reporting.

This is consistent with the principle stating: High level CPUC officials who report to the CPUC should be directly accountable to the Commissioners for their performance and the CPUC should establish performance metrics and evaluate their performance on a regular basis.

3. Consider striking or amending proposed PU 1711. Amendments should clarify the types of proceedings that the public outreach for potentially affected stakeholders is to apply taking into account the ex parte provisions of SB 215.

STATUS

01/26/16 In Assembly. Read first time. Held at Desk.

SUPPORT/OPPOSITION

None on file.

VOTES

1/26/2016 Senate Floor 37-0
1/21/2016 Senate Appropriations 7-0
1/13/2016 Senate Energy 10-0

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BILL LANGUAGE:

SB 512 (Hill) as amended January 4, 2016

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB512

ATTACHMENT

Principles for Reform
Safety, Public Access, Accountability and Transparency
The California Public Utilities Commission

Ensure Public Safety

The California Public Utilities Commission is continuing and expanding its efforts to increase public safety in every area of decision-making and enforcement.

In particular, we recommend implementing the following policies that will improve public safety:

- Safety must be an integral part of all rulemakings. In 2014 and 2015, the Commission embarked on ground breaking programs to mandate systematic risk assessment in utility investments, including adoption of a requirement that the Assigned Commissioner and Administrative Law Judge in a proceeding certify that any proposed decision has addressed relevant safety issues. The Commission should complement those efforts with additional inspection and enforcement activities.
- Safety should be institutionalized to provide the Commissioners expert guidance and analysis on safety planning, investments and enforcement. An Office of Safety Management should be created with the sole responsibility of assessing and advocating for safety in all Commission proceedings.
- As part of the Commission's responsibilities to reduce greenhouse gas emissions and build upon the findings of the Commission pursuant to the fugitive methane leak reduction strategy in Senate Bill 1371, the Commission should assess the next steps necessary to upgrade the gas distribution with a special concentration on the gas meter, and pipes leading to and from the meter, which are more frequently prone to leaks.
- The Commission should be empowered to enforce safety requirements in the case of poor excavation practices that threaten utility infrastructure and pose significant risks to the public. The Commission should be granted citation authority in cases where excavation damage has occurred but the excavator has failed to call 811 prior to commencing excavation

Increase Public Access

The California Public Utilities Commission is committed to increasing the public's access to information about its proceedings.

Specifically, the following steps will ensure that the public is better informed of the PUC's activities:

- The Commission's record in all contested formal proceedings¹ should be made accessible to the general public through the Commission's website in an easy, convenient and timely manner. Increased funding will be needed to ensure that the Commission can make the record publicly accessible, while ensuring adequate compensation for court reporters.
- Statutory and administrative procedures and processes should be revised to permit and ensure that public comments are entered into the evidentiary record or proceeding record at Public Participation Hearings and other public meetings convened by the PUC.
- Statutory clarification should ensure that the Commission is authorized to consider and rely upon interagency and stakeholder working group reports, academic research, and other information.
- The number and frequency of Commission voting business meetings held in Sacramento and other areas of the State outside of San Francisco should be increased to at least once a quarter.
- Public Utilities Code section 583 should be revised to better enable the PUC to respond in a full, complete, and timely manner to Public Records Act requests and to make documents in proceedings available to the public in a timely and complete fashion.
- Existing restrictions prohibiting discussion among more than two Commissioners outside of a noticed, public business meeting should be adjusted to enable them to discuss and deliberate the diverse public input they've received and complex legal and technical issues by conducting more frequent ratesetting deliberative meetings and considering administrative and managerial issues.²

¹ Including prepared testimony, exhibits, reporters' transcripts, etc.

² Provided no vote is taken or collective consensus is reached on any substantive matter.

Expand Accountability and Transparency

The California Public Utilities Commission is focused on expanding accountability and transparency in all its activities.

In particular, the following actions will help to institutionalize these critical values:

- High level Commission officials who report to the Commission should be directly accountable to the Commissioners for their performance and the Commission should establish performance metrics and evaluate their performance on a regular basis.
- Adjudication cases pertain to issues relating to the existing rights and responsibilities of individual utilities and parties. Ex parte contacts in adjudication cases are currently and should continue to remain prohibited.
- Ratesetting cases relate to specific utilities but are often large proceedings with multiple parties, significant policy issues that affect all utilities, and broad impacts on ratepayers and the public. Commissioners must base their decisions in ratesetting cases upon the evidentiary record, but frequently need to consider the impacts of those decisions on large groups of utility customers and interested parties. Ratesetting proceedings have strict procedural and due process requirements, which include reporting of ex parte communications between decision-makers and interested parties. Ex parte communications for ratesetting proceedings merit more accountability than currently exists through Commissioner logging of communications with interested parties and a prohibition on ex parte communications in ratesetting cases at conferences.
- Quasi-legislative cases pertain to policy issues relating to the prospective rights and obligations applicable to entire industries, classes of companies, customers or stakeholders. Procedural impediments should not be imposed that discourage participation by a wide variety of persons and entities interested in such proceedings.
- Access by the Commission's advisory staff (including the Executive Director and General Counsel) to information, analysis, opinions and recommendations from the widest variety of sources yields diversity and adds value to decision-making.